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09/957,011	09/20/2001	David L. Patton	82678A/F-P	3496

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EXAMINER

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ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/957,011
Filing Date: September 20, 2001
Appellant(s): PATTON ET AL.

MAILED
MAY 03 2006
GROUP 3700

Frank Pincelli
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/14/05 appealing from the Office action
mailed 4/6/04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The examiner in the rejection of the claims under appeal relies upon no evidence.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3,5 and 7 stand rejected under 35 U.S.C. 102(e) as being anticipated by Naya et al.. Naya et al discloses the method and all of the subject matter as set forth in the claims and is identical to the invention as broadly recited. Naya et al. recites in the Abstract of Disclosure that “ light is projected onto the back of the mask substrate to carry out exposure with near field light (7) “. Hence, Naya et al. clearly discloses a discrete continuous tone image formed by near field optics on a photosensitive media. Naya et al discloses at column 3, lines 58- 65 and at column 4, lines 27-30 that the continuous image is less than .015mm and no greater than either 10 or 20 microns. Appellant’s attention is directed to figures 1-7 where the limitations are clearly met by Naya et al. Further, the term continuous is defined as "...marked by uninterrupted extension in space, time or sequence". Hence, it is deemed by the examiner that the fine pattern disclosed by Naya et al is inherently continuous in the broadest sense.

(10) Response to Argument

Appellant argues that the Naya et al. reference does not teach or suggest discrete continuous tone images as taught and claimed by Appellant. In this regard, Appellant cites in his brief definitions from Webster's New College Dictionary and further states that “ an ‘image’ is not simply a line or mark but a reproduction of someone or something.” The Examiner submits that the Naya et al. reference clearly discloses a line width, which is part of a pattern. The Examiner submits that a “pattern” is not patentably

distinct from an "image" and it is well known in the printed matter arts that a pattern can be repeated to form an image and that the same is true in reverse. Further, both constitute printed matter, which can be defined as indicia that primarily effect intellectual impressions including those of an esthetic nature. Hence the Examiner deems that the Naya et al reference discloses patterns that anticipate the claims as broadly presented. Appellant further argues that there is no teaching or suggestion in Naya et al. that the image is a "continuous tone" image. The examiner submits that Naya et al. clearly discloses line widths in his patterns and said line widths are of a continuous nature in the same vein as those of appellant. The term "continuous" is defined as:

Without break, cessation, or interruption; without intervening space or time; uninterrupted; unbroken; continual; unceasing; constant; continued; protracted; extended; as, a *continuous* line of railroad; a *continuous* current of electricity.

In the truest sense neither appellants images nor those of Naya et al. are truly "continuous". If so they would completely cover the carrier media and obliterate anything else on the page. Hence the Examiner deems that Naya et al. discloses "continuous " images, which anticipates the claims as broadly presented.

Appellant further argues that there is no teaching or suggestion that the line of Naya et al. can or should produce any variation in shade or color. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., variation in shade of color) are not recited in the rejected claim(s). Although the claims are interpreted in

light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The Examiner submits that there is no recitation in any of the remaining claims of anything remotely concerned with the color of the continuous image.

Appellant also argues the withdrawn rejection of Brugada in view of Guerra et al. However since that previous withdrawn rejection has no bearing on the issues at hand, the Examiner has not responded to these arguments.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Willmon Fridie, Jr.

Conferees:

Monica Carter, SPE

Greg Vidovich, SPE

image.


